IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 2796 OF 2005

Babulal Chaganlal... ... Petitioner.

Versus

Sukhdeo Narayan Joshi..... Respondent.

Mr. A. L. Desai for the Petitioner.
Mr. T. K. Bairagdas i/by M/s.M.P.Vashi & Associates for the Respondent.

CORAM : B.H.MARLAPALLE, J.

DATED : 20TH APRIL, 2007.

P.C.:

Heard Mr. A. L. Desai, learned Counsel for the petitioner.

2. R. A. E. & R. Suit No. 3546 of 1983 which was filed for seeking decree of eviction on the ground of arrears of rent, additions alterations and unlawful sub-letting, came to be allowed by the learned Judge, Small Causes Court at Mumbai. By judgment and order passed by the learned trial Judge on 9th March, 1999 the suit was decreed and the defendant was directed to handover vacant and peaceful possession of the suit premises to the plaintiff within three months.

Aggrieved by the said judgment and order, the defendant filed Appeal No. 312 of 1999 which came to be dismissed by the lower appellate court vide its judgment and order dated 7th February, 2005.

3. In this writ petition the judgment and order passed by the lower appellate court confirming the judgment and order passed by the learned Judge, Small Causes Court at Mumbai, under the Bombay Rents Hotels & Lodging House Rates (Control) Act is challenged. In Writ Petition No. 4138 of 2006, I have already taken a view vide order dated 24th August, 2006 that such decree can be challenged by filing a civil revision application under Section 115 of the Code of Civil Procedure. I have further observed that when such a statutory remedy is available, a writ petition under Article 227 of the Constitution of India need not be entertained.

4. Hence, the writ petition is disposed of as such with liberty to the petitioner to file a civil revision application and if such a civil revision application is filed within a period of four weeks from today, the period of pendency of this writ petition be taken into consideration for condonation of delay, if any.

5. The interim order granted earlier will continue to operate for a period of two weeks more from today.

6. Annexures to the petition memo be returned, if applied for.

7. Writ petition is disposed of, accordingly.

Sd/-

(B. H. MARLAPALLE, J.)